



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 16 1988

Neal L. Conner, Jr., Esq.
Kopp, Peavy and Conner
P. O. Box 1278
Waycross, Georgia 31502

Dear Mr. Conner:

This refers to Act No. 414, H.B. No. 1126 (1987), which increases the number of governing board members from five to six; changes the method of selecting the mayor from rotation among the members of the city commission to direct election by majority vote for a four-year term; alters the powers, duties, and authority of the mayor; and provides an implementation schedule and the schedule for conducting the March 8, 1988, special mayoral election for the City of Waycross in Ware and Pierce Counties, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 29, 1988.

We have considered carefully the information you provided, as well as information from other interested parties. At the outset, we note that the long-standing practice in Waycross has been to rotate the position of mayor on a yearly basis among the members of the city commission. This apparently is in accord with the somewhat limited role the mayor plays in city government. As a result of litigation brought under Section 2 of the Voting Rights Act, the commission recently changed to a district method of election which enabled the city's black citizens to obtain an equal opportunity to participate in the political process and elect candidates of their choice to office. Thus, black voters now have a substantial opportunity to have persons serve as mayor whom they have been instrumental in electing to office. Indeed, it is our understanding that the person who presently serves as mayor is one of those who have been elected to the commission by a majority black constituency under the new districting plan.

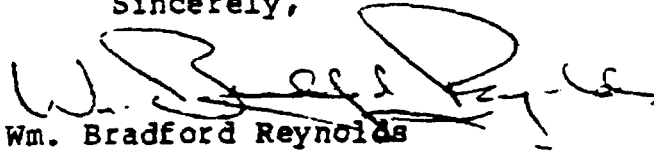
In this context, the instant local legislation provides for direct election of the mayor by the city at large with a majority vote required. The timing of this change and other information we have been provided suggests that the change may have been prompted by the adoption of single-member districts for commission elections. In any event, with the apparent pattern of racially polarized voting in city elections, the effect of the change would be significantly to erode the opportunity presently enjoyed by blacks to select those who will serve as mayor, particularly since the city has chosen to use a majority vote requirement for electing this position. We also note that this local legislation was adopted in a somewhat unusual manner, since it was not initiated by the city and the commission seems to have been given little opportunity for input into its drafting.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the changes occasioned by Act No. 414 as presently constituted. However, we hasten to add that if the mayor were elected by a plurality rather than majority vote, the concerns that prompted the interposing of this objection would be significantly alleviated.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Act No. 414 legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Waycross plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. Bradford Reynolds", is written over the typed name.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division